

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, RELATING TO CONSTRUCTION EXCISE TAXES FOR AFFORDABLE HOUSING, ADOPTING RELATED ADMINISTRATIVE PROVISIONS AND ESTABLISHING NEW CODE CHAPTER 3.60.

WHEREAS, the 2016 Oregon Legislative Assembly enacted Senate Bill 1533 (2016 Or. Laws ch. 59) authorizing cities to impose a construction excise tax for the purpose of promoting affordable housing; and

WHEREAS, the Milwaukie City Council has declared a housing emergency due to low vacancy rates, high rents and lack of affordable housing opportunities.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Chapter 3.60, as set forth below, hereby is adopted and incorporated into the Milwaukie Municipal Code.

Chapter 3.60 AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX

3.60.010 PURPOSE

This chapter establishes a construction excise tax on commercial, industrial and residential improvements to provide funding for affordable housing in the City of Milwaukie.

3.60.020 DEFINITIONS

“Commercial” means any structure designed or intended to be used, or actually used, for occupancy for other than residential purposes and includes structures otherwise categorized or described as industrial.

“Construct” or “construction” means erecting, constructing, enlarging, altering, repairing, improving, or converting any building or structure for which the issuance of a building permit is required pursuant to the provisions of Oregon law.

“Improvement” means any improvements to real property resulting in a new structure, additional square footage added to an existing structure or additional living space to an existing structure.

“Median family income” means median family income by household size for the City of Milwaukie as defined by the United States Department of Housing and Urban Development as adjusted and published periodically.

“Net revenue” means revenues remaining after refunds and the administrative fees described in Section 3.60.130.A are deducted from the total construction excise tax collected.

“Residential” means any structure designed or intended to be used, or actually used, for occupancy for residential purposes including any residential structure, dwelling, or dwelling unit.

“Value of improvement” means the total value of the improvement as determined by the construction permit(s) or building permit(s) for the improvement, regardless of the number of separate permits issued. The City building official shall calculate the total value in accordance with OAR 918-050-0100 Statewide Fee Methodologies for Residential and Commercial Permits or as otherwise provided by law.

3.60.030 ADMINISTRATION AND ENFORCEMENT AUTHORITY

The city manager or designee is responsible for the implementation, administration and enforcement of this Chapter. The city manager may adopt such policies and procedures as are necessary to efficiently and effectively carry out that responsibility, consistent with the provisions of this Chapter.

3.60.040 IMPOSITION OF TAX

- A.** Each person who obtains a permit to construct a commercial improvement in the City of Milwaukie shall pay a commercial construction excise tax in the amount of one percent of the value of the improvement.
- B.** Each person who obtains a permit to construct a residential improvement in the City of Milwaukie shall pay a residential construction excise tax in the amount of one percent of the value of the improvement.
- C.** The construction excise tax shall be due and paid at the time of issuance of a building permit.

3.60.050 Exemptions

- A.** Notwithstanding Section 3.60.040, the construction excise tax shall not be imposed on the following:
 - 1.** Residential housing units, including detached housing, that are subject to a deed restriction or other mechanism acceptable to City ensuring that the unit(s) are affordable under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than eighty percent of the median household income for a period of at least thirty years following the date of issuance of the building permit on which the improvement value is based and that remain affordable. For purposes of the initial determination of eligibility for this

exemption, the City shall use the median family income for the year prior to the date of issuance of the permit on which the improvement value is based. Continuing affordability shall be determined based on the median family income for the prior calendar year.

2. Accessory dwelling units. This exemption expires automatically on the date that is the fifth anniversary of the effective date of this Ordinance. The construction excise tax shall apply to all building permits for accessory dwelling units issued after that date.

3. Improvements having a total improvement value of less than \$100,000.

4. Public school improvements.

5. Public improvements as defined in ORS 279A.010.

6. Public or private hospital improvements.

7. Improvements to religious facilities primarily used for worship or education associated with worship.

8. Long term care facilities, as defined in ORS 442.015, operated by a not-for-profit corporation.

9. Residential care facilities, as defined in ORS 443.400, operated by a not-for-profit corporation.

10. Continuing care retirement communities, as defined in ORS 101.020, operated by a not-for-profit corporation.

11. Any improvements required to be exempted from this construction excise tax by state law.

B. The City may require any person seeking an exemption to demonstrate that the improvement is eligible for an exemption and to establish all necessary facts to support the exemption.

3.60.060 FAILURE TO PAY

The City shall not issue a building permit to any person who has failed to pay the construction excise tax unless the person has paid the full amount alleged by the City to be due.

3.60.070 FAILURE TO MAINTAIN UNITS AS AFFORDABLE

The exemption for affordable unit(s) provided in Section 3.60.050.A.1. automatically terminates if the unit(s) ceases to qualify as affordable at any time during the 30-year period of affordability. For purposes of this section,

affordability shall be calculated using the median family income determination for the preceding calendar year. The CET immediately shall be due and payable to City as of the date the unit no longer qualifies as affordable, together with interest and penalties as provided in Section 3.60.090. The amount of the CET shall be calculated using the CET in effect at the time the unit(s) ceases to qualify. The person obligated to pay shall be the owner of record of the unit(s) at the time the unit(s) ceases to qualify. The seller and buyer, jointly and severally, shall be obligated to pay if the unit(s) ceases to qualify as the result of a sale, including a sale to a person occupying or intending to occupy the unit whose income exceeds the median family income determination for the prior year.

3.60.080 STATEMENT OF ENTIRE VALUE OF IMPROVEMENT REQUIRED

- A.** It is a violation of this chapter for any person to fail to state or to misstate the full value of the improvement.
- B.** The construction excise tax shall be due on any increase in the value of the improvement arising from the value having been understated or arising from construction changes that result in increased building permit fees.

3.60.090 INTEREST AND PENALTIES FOR FAILURE TO COMPLY

- A.** Interest. Interest shall be due on the entire amount that the city manager or designee determines has not been paid, assessed at the rate of ten percent per annum from the due date. Interest shall be assessed to the 15th day of the month following the due date. Interest amounts properly assessed in accordance with this section may not be waived or reduced by the city manager.
- B.** Penalties. In addition to assessing interest, a penalty of five percent of the otherwise applicable construction excise tax liability shall be imposed upon:
 - 1.** Any person who removes a unit from the affordability exemption provided in Section 3.60.050.A.1 shall pay a penalty of five percent for each unit that no longer is exempt.
 - 2.** Any person who intentionally fails to state the full value of an improvement.
 - 3.** Any person who fails to pay the full amount of the tax, interest and any penalty within 30 days of notice from City that the tax is due.
- C.** Penalties and Interest Merged with Tax. Any accrued interest and imposed penalties under this section shall be merged with and become a part of the construction excise tax required to be paid under this chapter. This amount becomes the new base for calculating new interest amounts.

3.60.100 ENFORCEMENT BY CIVIL ACTION

The construction excise tax, and any assessed interest and penalties, due and owing under this Chapter constitutes a debt owing to the City by the person liable for the tax as set forth in Section 3.60.040. City has all remedies available at law and equity.

3.60.110 REFUNDS

A. The City shall issue a refund to any person who has paid a construction excise tax if:

1. the person establishes that the tax was paid for improvements that were otherwise eligible for an exemption under Section 3.60.050 at the time of permit issuance;
2. the person establishes that construction of the improvements was not commenced and the associated building permit has been cancelled by the City; or
3. the city manager or designee determines that the amount of any construction excise tax, penalty, or interest was erroneously collected or paid to the City.

B. The City shall either refund all amounts due within thirty days of a complete request for the refund or give written notice of the reasons why the request has been denied. Claims for refunds shall be made upon forms provided by the City. The request for the refund must be submitted within three years from the date of payment of the construction excise tax.

C. Denial of a request for refund may be appealed as provided for in Section 3.60.120.

3.60.120 APPEALS

A. A person who objects to a determination issued by the City applying the provisions of this chapter may file for review of the determination by the City's community development director. The request for administrative review must be in writing and received within ten days of the determination, and must include documentation supporting the request. The community development director's determination in the administrative review shall be sent by regular mail.

B. The administrative review determination of the community development director may be appealed to the city manager by filing a notice of appeal with the city manager within 10 days of issuance of the community development

director's determination. The notice shall describe the basis for the appeal and the relief sought.

C. The filing of any notice of appeal shall not stay the effectiveness of the written determination unless the city manager so directs.

D. Notwithstanding Section 3.60.060 the City may issue a building permit while an appeal is pending provided that the applicant posts with the City the full amount alleged by the City to be due. No interest shall accrue to the applicant on the deposit.

E. The city manager shall provide a written decision by U.S. mail to the person who filed the appeal. The city manager's decision on appeal shall be the City's final decision, subject to judicial review only as provided in ORS 34.010 et. seq.

3.60.130 DEDICATION OF REVENUE

A. The City may retain up to four percent of the tax collected for payment toward administrative expenses related to collection and distribution of the tax.

B. The net revenue from the tax on residential improvements will be allocated by the City as follows:

1. Fifteen percent of net revenue will be remitted to the Oregon Department of Housing and Community Services to fund home ownership programs.
2. Fifty percent of net revenue to fund incentives for the development and construction of affordable housing authorized by the City as provided by state law.
3. Thirty-five percent of net revenue to fund programs and activities related to affordable housing.

C. The net revenue from the tax on commercial improvements will be distributed as follows:

1. Fifty percent to fund incentives for the development and construction of housing that is affordable at up to 120 percent of median family income; and
 - Fifty percent for economic development programs with an emphasis on areas of the City that are subject to plans designated as eligible by the City. The eligible plans as of the date of this Ordinance are: Central Milwaukie Land Use and Transportation Plan, Downtown and Riverfront Land Use Framework Plan, and the

Milwaukie Urban Renewal Plan, the Economic Development Strategic Plan, and the North Milwaukie Industrial Area Plan. Additional eligible plans may be designated by the City Council.

Section 2. Construction and Severability

To the extent practicable, this Ordinance shall be construed so as to not conflict with any mandatory or prohibitory provision of state law. If any provision of this Ordinance is held invalid, such invalidity shall not affect other provisions of this Ordinance and such provisions shall be given effect without the invalid provision.

Section 3. Effective Date.

This Ordinance shall take effect on the 31st day following enactment. The tax imposed herein shall apply to all building permit applications for the improvement received on or after the effective date.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Scott S. Stauffer, City Recorder

City Attorney